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4 TARA DUGGAN, et al.,
5 Plaintiffs,
6 v.
7 TRI-UNION SEAFOODS LLC,
8 Defendant.

9 Case No. [19-cv-02562-WHO](#)
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ORDER ON DISCOVERY DISPUTE

Re: Dkt. No. 74

12 Plaintiffs served a Rule 45 subpoena *duces tecum* (“Subpoena”) on non-party International
13 Seafood Sustainability Foundation (“ISSF”) seeking documents relating to Chicken of the Sea,
14 StarKist, and Bumble Bee’s (collectively the “Tuna Companies”)¹ dolphin-safe and tuna-
15 sustainability practices that are central to their claims in this case and in related case *Gardner v.*
16 *StarKist*, No. 3:19-cv-02561-WHO. ISSF is a 501(c)(3) nonprofit foundation that conducts and
17 facilitates science-based initiatives for the long-term conservation and sustainable use of global
18 tuna stocks, reducing bycatch and promoting tuna ecosystem health. One of its objectives is to
19 report the results of independent audits conducted of participating companies measured against
20 Conservation Measures set by the ISSF Board.

21 ISSF initially objected wholesale to the Subpoena, but after meet-and-confers, plaintiffs
22 and ISSF agreed that ISSF would produce documents relating to “dolphin mortality”: “(1) all
23 communications between ISSF and the Tuna Companies for the entirety of the alleged Class
24 Period regarding dolphin mortality, and (2) all documents for the entirety of the alleged Class
25 Period regarding FADs, purse seine nets, and longlines as they relate to dolphin mortality.”

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27 ¹ Bumble Bee is a defendant in *Duggan v. Bumble Bee Foods, LLC*, No. 4:19-cv-02564-JSW,
28 which has not been related to the cases before me. That case is currently under automatic
bankruptcy stay.

1 However, ISSF disputes plaintiffs' other requests for documents on grounds that they are either
2 not relevant, publicly available, or not in its possession.

3 **A. Sustainability**

4 Plaintiffs seek any documents or communications relating to the Tuna Companies'
5 sustainability practices or lack thereof. ISSF argues that this request is overbroad because it has
6 nothing to do with dolphins; rather, it relates to ancillary references to "sustainability" contained
7 in the Second Amended Complaint ("SAC") in this case. It maintains that the SAC does not assert
8 a single claim related to "sustainability" independent of defendant's alleged use of dolphin-
9 harming fishing techniques and subsequent alleged use of "dolphin-safe" labels. Plaintiffs
10 respond that sustainability is relevant to both cases and limiting ISSF's production to documents
11 that specifically uses some variation of the word "dolphin" will exclude a vast number of relevant
12 documents.

13 I agree with ISSF that plaintiffs' sustainability allegations are intertwined with their central
14 claim that defendants' tuna products are not "dolphin-safe." Plaintiffs claim that ISSF has all sorts
15 of information on the effects of fishing practices on the marine environment. That may be true,
16 but the relevant information here is the effect of tuna fishing practices on dolphins. In the
17 "Chicken of the Sea's MSC Logo and Sustainable Fishing Practices Misrepresentations" section
18 of their SAC, plaintiffs allege that Chicken of the Sea products include a Marine Stewardship
19 Counsel logo ("MSC logo"), a separate label in which it promises that its products "meet vigorous
20 standards for sustainable fishing practices, like limiting bycatch (unwanted fish), avoid overfishing
21 and protecting marine environment." SAC ¶ 61.² But this allegation relates back to the central
22 claim that Chicken of the Sea uses tuna practices that harm or kill some dolphins. *See id.* ¶ 69
23 ("Because Chicken of the Sea uses longlines, purse seine nets, and FADs, and other well-known
24 dolphin-harming fishing techniques, notwithstanding its MSC certification and ISSF membership,
25 Chicken of the Sea's labeling of its tuna products with the MSC certified sustainability logo and

27 ² I note that the SAC in *Gardner*, which was the subject of my recent Order Denying StarKist's
28 Motion to Dismiss the Second Amended Complaint, does not include any allegations that mention
ISSF or a separate sustainability label, like the MSC logo here. The only label at issue in that case
is the dolphin-safe label.

1 its sustainable fishing practices representations are false, misleading, and/or deceptive.”).

2 Accordingly, I agree with ISSF’s proposal that plaintiffs’ request for documents relating to
3 sustainability should be narrowed to those that relate to dolphin harm and/or dolphin mortality.

4 **B. Financial Support, Audits, and Position on Fishing Practices**

5 Plaintiffs seek “(1) documents and communications regarding the audits of the Tuna
6 Companies’ fishing vessels, which ISSF pays for and publish their final audit reports; (2)
7 communications with the Tuna Companies concerning FADs, purse seine nets, and longlines; and
8 (3) all financial support from the Tuna Companies to ISSF.”

9 ISSF explains that its detailed IRS filings disclosing financial support from the ISSF
10 participating companies and the audit protocol and full audit reports for every company that
11 participates in ISSF, among many other documents, are publicly available on its website.
12 Plaintiffs do not explain why those public documents are insufficient to meet their requests
13 regarding the auditing of ISSF members, the financial support that ISSF receives, or ISSF’s
14 positions on FADs, purse seine nets, and longlines.

15 To the extent that plaintiffs seek documents underlying the relevant audits, ISSF explains
16 that it does not possess those documents because an independent third party, MRAG Americas,
17 conducts each audit and is solely responsible for interacting with the participating companies and
18 collecting relevant documents from them for the audit, which are not shared with ISSF.

19 In short, I agree with ISSF. It should produce (1) all communications between ISSF and
20 the Tuna Companies for the entirety of the alleged Class Period regarding dolphin mortality, and
21 (2) all documents for the entirety of the alleged Class Period regarding FADs, purse seine nets,
22 and longlines as they relate to dolphin mortality. Plaintiffs’ request to compel additional
23 documents to be produced at this time is DENIED.

24 **IT IS SO ORDERED.**

25 Dated: June 4, 2020

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William H. Orrick
United States District Judge